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# TIR 20-5: Massachusetts Tax Implications of an Employee Working Remotely due to the COVID-19 Pandemic

DATE:

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REFERENCED SOURCES:

[Massachusetts General Laws](https://malegislature.gov/Laws/GeneralLaws) (<https://malegislature.gov/Laws/GeneralLaws>)

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## I. Introduction

This TIR describes the Massachusetts tax implications of an employee working remotely in a state other than the state where the employee previously worked, solely due to the 2019 novel Coronavirus (“COVID-19”) pandemic. In response to the COVID-19 pandemic, Massachusetts and other states have declared states of emergency and issued temporary social-distancing measures and other restrictions. Consequently, many businesses have implemented work-from-home requirements for their employees. The rules announced in this TIR are being adopted to minimize disruption for employers and employees during the COVID-19 state of emergency. They are effective for the period beginning March 10, 2020 and ending on the date on which the Governor gives notice that the state of emergency declared in Executive Order 591 is no longer in effect.

This TIR explains the personal income and withholding tax obligations of and related to employees working from home due to a state-issued COVID-19 state of emergency. This TIR also announces that one or more employees working from home solely due to the COVID-19 pandemic will not subject a business to a sales and use tax collection obligation or to the corporate excise by reason of that fact. In addition, the presence of an employee working from home in Massachusetts under these circumstances will not impact the numerator of a business corporation’s corporate apportionment payroll factor for the duration of the Massachusetts COVID-19 state of emergency. Lastly, this TIR explains the application of the Massachusetts Paid Family and Medical Leave (“PFML”) program where an employee is working remotely in a different state.

## II. Personal Income and Withholding Tax

For Massachusetts personal income tax purposes, Massachusetts residents are generally taxed on all of their income from whatever sources derived. M.G.L. c. 62, § 2. Non-residents are taxed on items of gross income from sources within the Commonwealth, including income derived from or connected with any trade or business, including any employment, in Massachusetts. M.G.L. c. 62, § 5A. Wage income paid to an individual that is subject to the Massachusetts personal income tax generally must be withheld upon for each payroll period by his or her employer. M.G.L. c. 62B, § 2.

The Department of Revenue (“DOR”) promulgated emergency regulation 830 CMR 62.5A.3: Massachusetts Source Income of Non-Residents Telecommuting due to COVID-19, to explain the sourcing and withholding rules applicable to telecommuting employees during the COVID-19 state of emergency in Massachusetts. Pursuant to the regulation, for the duration of the Massachusetts COVID-19 state of emergency, all compensation received for personal services performed by a non-resident who, immediately prior to the Massachusetts COVID-19 state of emergency, was an employee engaged in performing such services in Massachusetts, and who, during such emergency, is performing such services from a location outside Massachusetts due solely to the Massachusetts COVID-19 state of emergency, will continue to be treated as Massachusetts source income subject to personal income tax under M.G.L. c. 62 and personal income tax withholding.

Other states have adopted or are adopting similar sourcing rules due to similar declared states of emergency. A resident employee suddenly working in Massachusetts due to a state’s COVID-19 state of emergency who continues to incur an income tax liability in that other state because of that state’s sourcing rule will be eligible for a credit for taxes paid to that other state under G.L. c. 62, § 6(a). In addition, the employer of such employee is not obligated to withhold Massachusetts income tax for the employee to the extent that the employer remains required to withhold income tax with respect to the employee in such other state.

### **III. Sales and Use Tax Nexus**

In general, a vendor has nexus for sales and use tax collection purposes if it is engaged in business in the Commonwealth. M.G.L. c. 64H, § 1. Generally, a vendor is engaged in

business in the Commonwealth if it has a physical presence in Massachusetts, including having one or more of its employees in Massachusetts, or if it makes sufficient sales into Massachusetts in a calendar year. *Id.*; M.G.L. c. 64H, § 34(a). These statutory rules are subject to the constitutional principle that physical presence will not establish nexus if that presence is a mere slightest presence. See, e.g., *National Geographic Society v. Calif. Bd. of Equalization*, 430 U.S. 551 (1977). For the duration of the COVID-19 state of emergency in Massachusetts, the presence of one or more employees that previously worked in another state but, solely due to the COVID-19 pandemic, are working remotely from Massachusetts, will not in and of itself trigger nexus for sales and use tax collection purposes.

## **IV. Corporate Excise**

### **A. Nexus**

A business corporation is generally subject to an excise due under M.G.L. c. 63 when it does business in Massachusetts. M.G.L. c. 63, §§ 1 and 39. A business corporation is generally considered to be doing business in Massachusetts when it has one or more employees conducting business activities on its behalf in Massachusetts. 830 CMR 63.39.1(3)(b)(5), (5)(b)(3). However, as noted above, these statutory rules are subject to the constitutional principle that physical presence will not establish nexus if that presence is a mere slightest presence. For the duration of the Massachusetts COVID-19 state of emergency, the Department will not consider the presence of one or more employees working remotely from Massachusetts solely due to the COVID-19 pandemic to be sufficient in and of itself to establish corporate nexus. In addition, such presence will not, of itself, cause a corporation to lose the protections of Public Law 86-272.

### **B. Apportionment**

In general, if a business corporation has income from business activity which is taxable both in Massachusetts and in another state, then the part of its net income derived from business carried on in Massachusetts is determined by multiplying all of its taxable net income by the three-factor apportionment percentage as provided in M.G.L. c. 63, § 38(c)-(g) and 830 CMR 63.38.1. That percentage is a fraction, the numerator of which generally

consists of a property factor, payroll factor, and sales factor, and the denominator of which is the total number of factors utilized in the numerator. The payroll factor is a fraction, the numerator of which is the total amount paid for compensation in Massachusetts during the taxable year by the taxpayer and the denominator of which is the total amount paid for compensation everywhere during the taxable year. 830 CMR 63.38.1(8). As mentioned above, the Department will not consider the presence of one or more employees working remotely from Massachusetts solely due to the COVID-19 pandemic to be sufficient in and of itself to establish corporate nexus.

Relatedly, for the duration of the COVID-19 state of emergency, services performed by such an employee in Massachusetts will not be considered to increase the numerator of the employer's payroll factor for corporate apportionment purposes.

## **V. Paid Family and Medical Leave**

Under the Massachusetts PFML program, businesses are required to collect and remit PFML contributions on behalf of individuals who perform services in Massachusetts. M.G.L. c. 175M, § 1. For the duration of the Massachusetts COVID-19 state of emergency, an individual who previously performed services outside of Massachusetts and was not subject to PFML will not become subject to PFML solely because the individual is temporarily working from home in Massachusetts due to the emergency as declared by such other state. Likewise, an individual who previously performed services in Massachusetts but is temporarily working from home outside of Massachusetts solely due to the Massachusetts COVID-19 state of emergency continues to be subject to the PFML rules.

/s/Geoffrey E. Snyder  
Geoffrey E. Snyder  
Commissioner of Revenue

April 21, 2020

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REFERENCED SOURCES:

[Massachusetts General Laws](https://malegislature.gov/Laws/GeneralLaws) (<https://malegislature.gov/Laws/GeneralLaws>)

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